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14 PTS of America, LLC

15 UNITED STATES DISTRICT COURT

16 DISTRICT OF NEVADA

17 DUKE THOMAS NGUYEN

18 Plaintiff,

19 vs.

20 PTS OF AMERICA, LLC, A Foreign Limited  
21 Liability Company; U.S. CORRECTIONS,  
22 LLC, A Foreign Limited Liability Company;  
23 JACOB EVETTS, an Individual; RYAN  
24 RIVERA, an Individual; ZACHARY  
25 BRANDON, an Individual; MICHAEL  
26 COLEMAN, an Individual;  
27 TRANSPORTATION EMPLOYEES DOE  
28 1 – 10; DOES 11-99 inclusive, ROE  
CORPORATIONS 100-199, inclusive

Defendants.

CASE NO. 2:18-cv-01717-RFB-PAL

**DEFENDANT PTS OF AMERICA,  
LLC'S ANSWER TO PLAINTIFF'S  
SECOND AMENDED COMPLAINT**

**DEFENDANT PTS OF AMERICA, LLC'S ANSWER TO  
PLAINTIFF'S SECOND AMENDED COMPLAINT**

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COMES NOW, defendant, PTS of America, LLC (herein after defendant), by and through their counsel of record, Thorndal Armstrong Delk Balkenbush and Eisinger, and for their answer to plaintiff's second amended complaint on file herein, admits, denies and alleges as follows:

**JURY DEMAND**

1. No charging allegations are contained in paragraph 1 to which this answering defendant need reply. Only a request for jury demand is contained therein. However, if any charging allegations are contained in paragraph 1, same are denied.

**JURISDICTION AND PARTIES**

2. This answering defendant is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 2 of plaintiff's second amended complaint, and therefore denies the same.

3. This answering defendant is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 3 of plaintiff's second amended complaint, and therefore denies the same.

4. This answering defendant is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 4 of plaintiff's second amended complaint, and therefore denies the same.

5. This answering defendant is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 5 of plaintiff's second amended complaint, and therefore denies the same.

6. This answering defendant herein denies the allegations therein.

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7. This answering defendant is without knowledge or information sufficient to form an opinion as to the truth of the allegations contained in paragraph 7 of plaintiff's second amended complaint, and therefore denies the same.

8. This answering defendant herein denies the allegations therein.

9. This answering defendant herein denies the allegations therein.

10. This answering defendant herein denies the allegations therein.

11. This answering defendant herein denies the allegations therein.

12. This answering defendant herein denies the allegations therein.

13. This answering defendant herein denies the allegations therein.

14. This answering defendant herein denies the allegations therein.

## GENERAL ALLEGATIONS

15. This answering defendant repeats and realleges each and every response to paragraphs 1 through 14 of plaintiff's second amended complaint as if set forth therein.

16. No charging allegations are contained in paragraph 16 to which this answering  
ant need reply. Only a factual recitation is contained therein. However, if any charging  
ions are contained in paragraph 16, same are denied.

17. No charging allegations are contained in paragraph 17 to which this answering  
ant need reply. Only a factual recitation is contained therein. However, if any charging  
ions are contained in paragraph 17, same are denied.

18. No charging allegations are contained in paragraph 18 to which this answering  
 ant need reply. Only a factual recitation is contained therein. However, if any charging  
 ions are contained in paragraph 18, same are denied.

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1           19.     No charging allegations are contained in paragraph 19 to which this answering  
2 defendant need reply. Only a factual recitation is contained therein. However, if any charging  
3 allegations are contained in paragraph 19, same are denied.

4           20.     No charging allegations are contained in paragraph 20 to which this answering  
5 defendant need reply. Only a factual recitation is contained therein. However, if any charging  
6 allegations are contained in paragraph 20, same are denied.

7           21.     No charging allegations are contained in paragraph 21 to which this answering  
8 defendant need reply. Only a factual recitation is contained therein. However, if any charging  
9 allegations are contained in paragraph 21, same are denied.

10          22.     No charging allegations are contained in paragraph 22 to which this answering  
11 defendant need reply. Only a factual recitation is contained therein. . However, if any charging  
12 allegations are contained in paragraph 22, same are denied.

13          23.     No charging allegations are contained in paragraph 23 to which this answering  
14 defendant need reply. Only a factual recitation is contained therein. However, if any charging  
15 allegations are contained in paragraph 23, same are denied.

16          24.     No charging allegations are contained in paragraph 24 to which this answering  
17 defendant need reply. Only a factual recitation is contained therein. However, if any charging  
18 allegations are contained in paragraph 24, same are denied.

19          25.     No charging allegations are contained in paragraph 24 to which this answering  
20 defendant need reply. Only a factual recitation is contained therein. However, if any charging  
21 allegations are contained in paragraph 25, same are denied.

22          26.     This answering defendant is without knowledge or information sufficient to form  
23 a belief as the truth of the allegations contained in paragraph 26 of plaintiff's second amended  
24 complaint, and therefore denies the same.

35. This answering defendant is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 35 of plaintiff's second amended complaint, and therefore denies the same.

1           36.     This answering defendant is without knowledge or information sufficient to form  
2 a belief as the truth of the allegations contained in paragraph 36 of plaintiff's second amended  
3 complaint, and therefore denies the same.

4           37.     This answering defendant herein denies the allegations therein.

5           38.     This answering defendant herein denies the allegations therein.

6           39.     This answering defendant is without knowledge or information sufficient to form  
7 a belief as the truth of the allegations contained in paragraph 39 of plaintiff's second amended  
8 complaint, and therefore denies the same.

9           40.     This answering defendant is without knowledge or information sufficient to form  
10 a belief as the truth of the allegations contained in paragraph 40 of plaintiff's second amended  
11 complaint, and therefore denies the same.

12           41.     This answering defendant is without knowledge or information sufficient to form  
13 a belief as the truth of the allegations contained in paragraph 41 of plaintiff's second amended  
14 complaint, and therefore denies the same.

15           42.     This answering defendant is without knowledge or information sufficient to form  
16 a belief as the truth of the allegations contained in paragraph 42 of plaintiff's second amended  
17 complaint, and therefore denies the same.

18           43.     This answering defendant is without knowledge or information sufficient to form  
19 a belief as the truth of the allegations contained in paragraph 43 of plaintiff's second amended  
20 complaint, and therefore denies the same.

21           44.     This answering defendant is without knowledge or information sufficient to form  
22 a belief as the truth of the allegations contained in paragraph 44 of plaintiff's second amended  
23 complaint, and therefore denies the same.

1           45.     This answering defendant is without knowledge or information sufficient to form  
2 a belief as the truth of the allegations contained in paragraph 45 of plaintiff's second amended  
3 complaint, and therefore denies the same.

4           46.     This answering defendant herein denies the allegations therein.

5           47.     This answering defendant herein denies the allegations therein.

6           48.     This answering defendant is without knowledge or information sufficient to form  
7 a belief as the truth of the allegations contained in paragraph 48 of plaintiff's second amended  
8 complaint, and therefore denies the same.

9           49.     This answering defendant herein denies the allegations therein.

10          50.     This answering defendant is without knowledge or information sufficient to form  
11 a belief as the truth of the allegations contained in paragraph 50 of plaintiff's second amended  
12 complaint, and therefore denies the same.

13          51.     This answering defendant herein denies the allegations therein.

14          52.     This answering defendant herein denies the allegations therein.

15          53.     This answering defendant herein denies the allegations therein.

16          54.     This answering defendant herein denies the allegations therein.

17          55.     This answering defendant herein denies the allegations therein.

18          56.     This answering defendant herein denies the allegations therein.

19          57.     This answering defendant herein denies the allegations therein.

20          58.     This answering defendant herein denies the allegations therein.

21          59.     No charging allegations are contained in paragraph 59 to which this answering  
22 defendant need reply. Only a factual assertion is contained therein. However, if any charging  
23 allegations are contained in paragraph 59, same are denied.

24          60.     This answering defendant herein denies the allegations therein.

1           61.    This answering defendant herein denies the allegations therein.

2           62.    This answering defendant herein denies the allegations therein.

3           63.    This answering defendant herein denies the allegations therein.

4           64.    This answering defendant herein denies the allegations therein.

5           65.    This answering defendant herein denies the allegations therein.

6           66.    This answering defendant herein denies the allegations therein.

7           67.    This answering defendant is without knowledge or information sufficient to form  
8  
9 a belief as the truth of the allegations contained in paragraph 67 of plaintiff's second amended  
10 complaint, and therefore denies the same.

11          68.    This answering defendant herein denies the allegations therein.

12          69.    This answering defendant herein denies the allegations therein.

13          70.    No charging allegations are contained in paragraph 70 to which this answering  
14 defendant need reply. Only a factual assertion is contained therein. However, if any charging  
15 allegations are contained in paragraph 70, same are denied.  
16

17          71.    This answering defendant herein denies the allegations therein.

18          72.    This answering defendant herein denies the allegations therein.

19          73.    This answering defendant herein denies the allegations therein.

20                   **FIRST CLAIM FOR RELIEF**

21                   **Violation of 42 U.S.C. § 1983**

22                   **Eighth Amendment Prohibition Against Cruel and Unusual Punishment**  
23                   **(Against Individual Defendants)**

24          74.    This answering defendant repeats and realleges each and every response to  
25 paragraphs 1 through 73 of plaintiff's second amended complaint as if set forth therein.

26          75.    No charging allegations are contained in paragraph 75 to which this answering  
27 defendant need reply. Only a recitation of 42 U.S.C. § 1983 is included therein. However, if any  
28 charging allegations are contained in paragraph 75, same are denied.



1           76.     This answering defendant is without knowledge or information sufficient to form  
2 a belief as the truth of the allegations contained in paragraph 76 of plaintiff's second amended  
3 complaint, and therefore denies the same.

4           77.     No charging allegations are contained in paragraph 77 to which this answering  
5 defendant need reply. Only a legal assertion is contained therein. However, if any charging  
6 allegations are contained in paragraph 77, same are denied.

7           78.     This answering defendant is without knowledge or information sufficient to form  
8 a belief as the truth of the allegations contained in paragraph 78 of plaintiff's second amended  
9 complaint, and therefore denies the same.

10           79.     This answering defendant herein denies the allegations therein.

11           80.     This answering defendant herein denies the allegations therein.

12           81.     This answering defendant herein denies the allegations therein.

13           82.     This answering defendant herein denies the allegations therein.

14           83.     This answering defendant herein denies the allegations therein.

15           84.     This answering defendant herein denies the allegations therein.

16           85.     This answering defendant herein denies the allegations therein.

17           86.     This answering defendant herein denies the allegations therein.

18           87.     This answering defendant herein denies the allegations therein.

19           88.     This answering defendant herein denies the allegations therein.

20                   **SECOND CLAIM FOR RELIEF**

21                   **Violation of 42 U.S.C. § 1983**

22                   **Eighth Amendment Prohibition Against Cruel and Unusual Punishment**  
23                   **(Against PTS and/or U.S. Corrections Defendants)**

24           89.     This answering defendant repeats and realleges each and every response to  
25 paragraphs 1 through 88 of plaintiff's second amended complaint as if set forth therein.  
26  
27  
28

1           90.    No charging allegations are contained in paragraph 90 to which this answering  
2 defendant need reply. Only a recitation of 42 U.S.C. § 1983 is included therein. However, if any  
3 charging allegations are contained in paragraph 90, same are denied.

4           91.    This answering defendant herein denies the allegations therein.

5           92.    No charging allegations are contained in paragraph 92 to which this answering  
6 defendant need reply. Only a legal assertion is contained therein. However, if any charging  
7 allegations are contained in paragraph 92, same are denied.

8           93.    This answering defendant herein denies the allegations therein.

9           94.    This answering defendant herein denies the allegations therein.

10          95.    This answering defendant herein denies the allegations therein.

11          96.    This answering defendant herein denies the allegations therein.

12          97.    This answering defendant herein denies the allegations therein.

13          98.    This answering defendant herein denies the allegations therein.

14          99.    This answering defendant herein denies the allegations therein.

15          100.   No charging allegations are contained in paragraph 100 to which this answering  
16 defendant need reply. Only a factual assertion is contained therein. However, if any charging  
17 allegations are contained in paragraph 100, same are denied.

18          101.   This answering defendant herein denies the allegations therein.

19          102.   This answering defendant herein denies the allegations therein.

20          103.   This answering defendant herein denies the allegations therein.

21          104.   This answering defendant herein denies the allegations therein.

22          105.   This answering defendant herein denies the allegations therein.

23          106.   This answering defendant herein denies the allegations therein.

24          107.   This answering defendant herein denies the allegations therein.

108. This answering defendant herein denies the allegations therein.

109. This answering defendant herein denies the allegations therein.

**THIRD CLAIM FOR RELIEF**  
**Negligence/Negligent Hiring Training and Supervision**  
**(Against PTS and/or U.S. Corrections Defendants)**

110. This answering defendant repeats and realleges each and every response to paragraphs 1 through 109 of plaintiff's second amended complaint as if set forth therein.

111. This answering defendant is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 111 of plaintiff's second amended complaint, and therefore denies the same.

112. This answering defendant is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 112 of plaintiff's second amended complaint, and therefore denies the same.

113. This answering defendant herein denies the allegations therein.

114. This answering defendant herein denies the allegations therein.

115. This answering defendant herein denies the allegations therein.

116. No charging allegations are contained in paragraph 116 to which this answering defendant need reply. Only a legal assertion is contained therein. However, if any charging allegations are contained in paragraph 116, same are denied.

117. This answering defendant herein denies the allegations therein.

118. This answering defendant herein denies the allegations therein.

119. This answering defendant herein denies the allegations therein.

120. This answering defendant herein denies the allegations therein.

121. This answering defendant herein denies the allegations therein.

122. This answering defendant herein denies the allegations therein.

1 123. This answering defendant herein denies the allegations therein.

2 124. This answering defendant herein denies the allegations therein.

3 125. This answering defendant herein denies the allegations therein.

4 126. This answering defendant herein denies the allegations therein.

5 **FOURTH CLAIM FOR RELIEF**  
6 **Negligence/Respondeat Superior**

7 127. This answering defendant repeats and realleges each and every response to  
8 paragraphs 1 through 126 of plaintiff's second amended complaint as if set forth therein.

9 128. This answering defendant herein denies the allegations therein.

10 129. This answering defendant herein denies the allegations therein.

11 130. This answering defendant herein denies the allegations therein.

12 131. This answering defendant herein denies the allegations therein.

13 132. This answering defendant herein denies the allegations therein.

14 133. This answering defendant herein denies the allegations therein.

15 134. This answering defendant herein denies the allegations therein.

16 135. This answering defendant herein denies the allegations therein.

17 136. This answering defendant herein denies the allegations therein.

18 137. This answering defendant herein denies the allegations therein.

19 138. This answering defendant herein denies the allegations therein.

20 **AFFIRMATIVE DEFENSES**

21 **FIRST AFFIRMATIVE DEFENSE**

22 Plaintiff's second amended complaint fails to state a claim upon which relief can  
23 be granted against this answering defendant.

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**SECOND AFFIRMATIVE DEFENSE**

The liability of defendants herein, if any, is several.

**THIRD AFFIRMATIVE DEFENSE**

Any damages sustained by plaintiff was do to an act of god and not contributed to by any act or omission of this answering defendant.

**FOURTH AFFIRMATIVE DEFENSE**

The occurrence referred to in plaintiff's second amended complaint and all damages, if any, arising therefrom, were caused by the acts or omissions of a third person or persons over whom this answering defendant had no control.

**FIFTH AFFIRMATIVE DEFENSE**

This answering defendant alleges that plaintiff was negligent in failing to exercise reasonable care for his own safety during the events described in plaintiff's second amended complaint, including, but not limited to, his failure to fasten his seatbelt. Such negligence was a proximate cause and contributing factor to the injuries allegedly sustained resulting from the accident referred to in plaintiff's second amended complaint.

**SIXTH AFFIRMATIVE DEFENSE**

At all times and places alleged in plaintiff's second amended complaint the negligence, misconduct and fault of the plaintiff exceeds that of this answering defendant if any, and plaintiff there by barred from any recovery against this answering defendant.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to mitigate his damages.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff is barred from recovering any special damages herein for failure to specifically allege the types of special damages claimed, pursuant to Rule 9, FRCP.

**NINTH AFFIRMATIVE DEFENSE**

Under the laws of this jurisdiction and or any applicable laws of any other jurisdiction, if any, punitive damages are not recoverable.

**TENTH AFFIRMATIVE DEFENSE**

Punitive damages are not recoverable against this answering defendant as no facts exist to support the allegation that this answering defendant was guilty of malice, oppression or fraud.

**ELEVENTH AFFIRMATIVE DEFENSE**

The statutory requisites for punitive damages have not been pled, thus are not available to plaintiff.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff is constrained from asserting any claims against this answering defendant because plaintiff has not come before this court with clean hands.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's second amended complaint is barred by the applicable Doctrine of Laches.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's second amended complaint is barred by the applicable statute of limitations

**FIFTEENTH AFFIRMATIVE DEFENSE**

Defendant alleges that plaintiff has failed to name a party necessary for full and adequate relief essential in this action.

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**SIXTEENTH AFFIRMATIVE DEFENSE**

This answering defendant alleges that the conduct by it was not the cause nor proximate cause of any injury allegedly sustained by plaintiff.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

This answering defendant alleges that the damages, if any, to plaintiff were, as alleged in plaintiff's second amended complaint, proximally caused by new, independent and efficient intervening cause and not by any alleged negligence on the part of this answering defendant.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiff is estopped from asserting any cause of action what so ever against this answering defendant.

**NINETEENTH AFFIRMATIVE DEFENSE**

This answering defendant alleges this court has no subject matter jurisdiction over the action.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiff, by his acts and conduct has waived and abandoned any and all claims as alleged herein against this answering defendant.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

This answering defendant alleges there was no joint activity or conspiracy of any sort between defendants herein.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

This answering defendant is not subject to suit upon the facts and conclusions as stated in plaintiff's second amended complaint by reasons that this answering defendant is entitled to immunity as afforded by appropriate Nevada Statute.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

This answering defendant is not liable to plaintiff for any violation allegedly sustained under 42 U.S.C. § 1983.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

Pursuant to FRCP 11 all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of defendant, PTS of America, LLC's answer to plaintiff's second amended complaint, and therefore, this answering defendant reserves the right to amend its answer to the complaint to allege additional affirmative defenses if subsequent investigation so warrants.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

All risks and dangers involved in the factual situation described in plaintiff's second amended complaint were open, obvious and known to plaintiff, and plaintiff voluntarily assumes said risks and dangers.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

Punitive damages are not recoverable against this answering defendant as no facts exist to support the allegation that the conduct of this answering defendant was reckless or taken with wanton disregard for the constitutional rights of plaintiff.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff is constrained from invoking any equitable jurisdiction and an equitable remedy because plaintiff has not come before this court with clean hands.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

The damages, if any, incurred by plaintiff, are not attributable to any act, conduct or omission on the part of this answering defendant, and defendant denies that it was negligent in any manner or in degree with respect to the matter set forth in plaintiff's complaint.



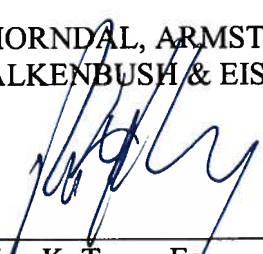
**PRAYER FOR RELIEF**

WHEREFORE, defendant, PTS of America, LLC, prays for judgment as follows:

1. That plaintiff takes nothing by reason of the second amended complaint on file herein;
2. That the same be dismissed with prejudice; and
3. This answering defendant be awarded costs and reasonable attorney's fees incurred herein

DATED this 29<sup>th</sup> day of October, 2019.

THORNDAL, ARMSTRONG, DELK,  
BALKENBUSH & EISINGER




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Attorney for Defendant,  
PTS of America, LLC

**CERTIFICATE OF SERVICE**

Pursuant to NRCP Rule 5(b), on the 29<sup>th</sup> day of October, 2019, service of **DEFENDANT PTS OF AMERICA, LLC'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT** was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following individuals at the following electronic mail addresses:

NAME	TEL., FAX & E-MAILS	PARTY REPRESENTING
Keith E. Galliher, Esq. Jeffrey L. Galliher, Esq. The Galliher Law Firm 1850 East Sahara Ave., Suite 107 Las Vegas, NV 89104	Tel.: (702) 735-0049 Fax: (702) 735-0204  E-Mail: <a href="mailto:kgalliher@galliherlawfirm.com">kgalliher@galliherlawfirm.com</a> <a href="mailto:jgalliher@galliherlawfirm.com">jgalliher@galliherlawfirm.com</a>	Plaintiff, Duke Thomas Nguyen
Steven T. Jaffe, Esq. Monte Hall, Esq. Taylor R. Anderson, Esq. Hall Jaffe & Clayton, LLP 7425 Peak Drive Las Vegas, Nevada 89128	Tel.: (702) 316-4111 Fax: (702) 316-4114  E-Mail: <a href="mailto:sjaffe@lawhjc.com">sjaffe@lawhjc.com</a> <a href="mailto:montehall@lawhjc.com">montehall@lawhjc.com</a> <a href="mailto:tanderson@lawhjc.com">tanderson@lawhjc.com</a>	Defendant, U.S. Corrections, LLC, Jacob Evetts, Ryan Rivera, Zachary Brandon, and Michael Coleman

  
An employee of THORNDAL, ARMSTRONG,  
DELK, BALKENBUSH & EISINGER